

## REMARKS

### Restriction Requirement

In the Office Action mailed August 28, 2003, the Examiner required restriction to one of the following Groups:

- I. Claims 1-5,10 and 12, drawn to DNA
- II. Claims 6-9, drawn to plants, and
- III. Claims 11, and 13-16, drawn to polypeptides.

In response to this requirement, Applicant elects **Group I** comprising Claims 1-5,10 and 12 with traverse as to the restriction between Groups I and II. The claims of Group III (Claims 11 and 13- 16) have been canceled as directed toward an unelected invention.

Applicant submits that the claims of Group I and Group II are appropriately considered part of the same invention. The Examiner stated that the claims of Group II are distinct from the claims of Group I because the claims of Group II are directed to a living organism. The fact that the claims of Group II are directed to a living organism is not a valid basis for the restriction. The plants of Group II serve as a host for expression of the nucleic acids of Group I. The relationship between the claims of Group I and Group II is that of a vector and a host organism. As the Examiner is aware, claims to plasmid vectors and the bacterial or yeast cells that express these vectors are routinely issued in the same patent. The fact that the claims of Group II are directed to a multi-cellular plant host does not affect this analogy: bacterial and yeast hosts are also “living organisms”.

The Applicant also asserts that examining claims of both Group I and Group II would not be unduly burdensome on the Examiner because field of art is the same for both Groups.

The Examiner has not provided any legitimate justification for the asserted restriction between Group I and Group II. Therefore, Applicant respectfully requests that restriction requirement be withdrawn with regard to the claims of Group I and Group II.

Applicants respectfully submit that the claims are in condition for allowance and an early notification of such is solicited.

Please direct any calls in connection with this application to the undersigned at (415) 781-1989.

Respectfully submitted,

DORSEY & WHITNEY, LLP

By: 

Todd A. Lorenz

Registration No. 39,754

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**Customer No.: 32940**  
Dorsey & Whitney LLP  
Four Embarcadero Center, Suite 3400  
San Francisco, California 94111-4187

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